

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEO McKAYE,

Plaintiff,

No. 05-CV-73968-DT

vs.

Hon. Gerald E. Rosen

SHERRY BURT,

Defendants.

\_\_\_\_\_ /

ORDER REMANDING CASE TO THE MAGISTRATE JUDGE

At a session of said Court, held in  
the U.S. Courthouse, Detroit, Michigan  
on January 26, 2007

PRESENT: Honorable Gerald E. Rosen  
United States District Judge

This Section 1983 prisoner civil rights action is presently before the Court on the October 27, 2006 Report and Recommendation of United States Magistrate Judge Wallace Capel, Jr., recommending that the Court grant Defendant's Motion to Dismiss and dismiss Plaintiff's Complaint in its entirety for failure to exhaust available administrative remedies. Although no timely objections have been filed, having reviewed and considered the Magistrate Judge's Report and Recommendation, and the entire record of this matter, the Court finds insufficient basis for dismissal of Plaintiff's Complaint at this time in light of the United States Supreme Court's January 22, 2007 decision in *Jones v. Bock*, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, 2007 WL 135890 (Jan. 22, 2007). Therefore, this case is REMANDED to the Magistrate Judge for further consideration in light of the

Supreme Court's rulings.

s/Gerald E. Rosen

Gerald E. Rosen  
United States District Judge

Dated: January 26, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 26, 2007, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager